

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 476 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PATEL KHODIDAS AMRESHI

Appearance:

Mr. S.R.Divetia, A.P.P. for the appellant.

Respondent served.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 03/08/96

ORAL JUDGEMENT: (Per : Kadri, J.) :-

The State of Gujarat has challenged legality and validity of the judgment and order dated February 18,1985

passed by the learned Additional Sessions Judge, Amreli, in Criminal Appeal no.3/84, whereby the learned Additional Sessions Judge allowed the appeal by setting aside the judgment and order dated February 3,1984 passed by the learned Judicial Magistrate, First Class, Lathi, in Criminal Case no. 411/81 and acquitted the respondent-accused of the offences punishable under sections 420 and 467 of the Indian Penal Code.

2. The prosecution case as unfolded at the trial is as under :-

The respondent-accused Khodidas Amarsi Patel was working as Talati-cum-Mantri in village Malaviya Pipariya Group at the relevant time i.e. in the year 1978-79. It is alleged that the respondent-accused had taken Rs.2200/- from one Devchand Raja Mulani on the promise that he would be allotted a plot of land situated in the village Pipariya, opposite temple of Shitra Mataji. It is alleged that though the amount of Rs.2200/was accepted by the respondent-accused, he did not pass any receipt and thereby committed offence of cheating punishable under section 420 of the Indian Penal Code. It is further alleged that the respondent accused fabricated false document in the guise of a Sanand granted in favour Devchand Raja for the allotment of land. It is also alleged that the respondent accused forged valuable security in the form of receipt of Gram panchayat for the amount of Rs. 189.90 ps. alleged to have been received from said Devchand Raja. It is further alleged that the said amount of Rs.189.90 ps. was not credited by the respondent-accused in Rojmel of the Panchayat and had therefore,also committed criminal breach of trust.It is alleged that he had handed over the order of the office of T.D.O. dated 22,8.1978 to Devchand Movani. and that in the said order in the blank space the respondent-accused had inserted the name of Devchand Movani and had handed over the office copy of the order to Devchand Movani. It is further alleged that in the public auction that was held for the plots of the village, Devchand Movani had not taken the part as a bidder and yet, he had been given the forged document and had received amount from him. It is alleged that by giving the forged document to Devchand Raja he had been deceived, and that he had accepted the amount of Rs.2200/-. It has been also alleged that he had erased the office copy of receipt book bearing serial no.79 and that he had committed mischief in the record of the Panchayat.

3. Mr. Prabhashanker Harishanker Joshi, Circle Inspector, Taluka Panchayat, Lathi, lodged complaint at

Lathi Police Station against the respondent-accused for the alleged offences under sections 406, 409, 420, 467, 474, 477(A) of the Indian Penal Code. After usual investigation, P.S.I. Mr. Chunilal Ramji Vandarvala, who was incharge of Lathi Police Station, submitted chargesheet in the Court of learned Judicial Magistrate, First Class, Lathid, which was numbered as Criminal Case no.411/81.

4. Charge at Exh.5 was framed against the accused by the learned Judicial Magistrate, First Class, Lathi for the offences punishable under sections 406, 409,420, 467, 471 and 477-A of the Indian Penal Code, which was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried.

5. After examining the prosecution witnesses and production of documentary evidence, statement of the respondent-accused under section 313 of the Criminal Procedure Code,1973 was recorded, wherein the accused stated that he had not prepared the receipt of Rs.189.90 ps. The accused submitted written reply which is produced at Exh.161 on record. In the written reply, the respondent-accused stated that Taluka Development Officer Mr.Makwana had a grudge against him and as a result of which Mr. Makwana instigated village people and got filed several cases against him, wherein he was honourably acquitted by the Court. It is also stated that he had not prepared receipt no.79 in favour of Devchand Raja for the amount of Rs.189.90. That this receipt was subsequently cancelled.

6. The learned Judicial Magistrate, First Class by his judgment and order dated February 3,1984 convicted the accused under section 420 of I.P.C. and sentenced him to suffer R.I. for six months and to pay a fine of Rs.500/-,i/d. R.I. for two months. The learned Magistrate further convicted the accused for the offence under section 467 of I.P.C. and sentenced him to suffer R.I. for one year and to pay a fine of Rs.1000/-, i/d. R.I. for four months. However, the respondent-accused was acquitted of the offences punishable under sections 406, 409, 471 and 477(A) of the Indian Penal Code. The prosecution did not challenge the acquittal of the respondent-accused in the Court of appeal and, therefore, the acquittal of the respondent-accused of the charges under sections 406, 409, 471 and 477-A of I.P.C. became final.

7. The respondent-accused challenged the order of conviction before the learned Additional Sessions Judge

by filing Criminal Appeal no. 3 of 1984. The learned Additional Sessions Judge allowed Criminal Appeal no.3/84 by quashing and setting the order of conviction passed by the learned Judicial Magistrate, First Class, Lathi, in Criminal Case no.411/81, which has given rise to this appeal by the appellant-State of Gujarat.

8. The learned Additional Public Prosecutor Mr.S.R.Divetia has taken us through the evidence of prosecution witnesses and also the documentary evidence, mainly,consisting of the Sanand Exh.25, Receipt Exh.31, Report of Hand-writing Expert Exh.141 etc.and has assailed the reasoning of the learned Additional Sessions Judge.

9. After carefully scrutinising the evidence led by the prosecution,the learned Additional Sessions Judge has rightly held that the offence under section 420 of I.P.C. is not proved against the respondent-accused, as the prosecution has failed to establish that the amount of Rs.2200/- was paid by the witness Devchand Raja to the respondent. Witness Devchand Raja had never applied for allotment of land to the Gram Panchayat. Moreover, allotment of land was made after holding public auction wherein name of the witness Devchand Raja never appeared. In the list Exh.24 of the allottees of the land, which was prepared after holding public auction, name of witness Devchand Raja never appeared. Therefore, the learned Judge has rightly disbelieved the prosecution version that the respondent had committed offence of cheating by deceiving fraudulently and dishonestly, inducing said Devchand Raja to pay the amount of Rs.2200/- to the respondent on false promise of allotment of plot of land to him.

10. Receipt Exh.31 bearing serial no.79,which is alleged to have been prepared by the respondent for the amount of Rs.189.90 ps. was not proved beyond doubt to have been made in the hand-writing of the respondent-accused. It was alleged that specimen hand-writings of the respondent were taken in presence of panchas, but the panchnama was not duly proved by the prosecution. Therefore, the learned Additional Sessions Judge rightly disbelieved that the alleged specimen hand-writing were of the respondent-accused. In our view, the prosecution has failed to prove beyond doubt that Receipt Exh.31 bearing serial no.79, which was for a sum of Rs.189.90 ps. was prepared by the respondent. Moreover, no amount fell due of the Gram panchayat against witness Devchand Raja and, therefore, there was no question of paying the amount of Rs.189.90 ps. by

Devchand Raja to the respondent, who was at the relevant time serving as Talati-cum-Mantri of the Gram Panchayat. In our view, the learned Additional Sessions Judge has rightly disbelieved the prosecution case that the respondent-accused had committed forgery of valuable security, which is punishable under section 467 of I.P.C. We do not find any illegality and perversity in the reasonings of the learned Additional Sessions Judge in acquitting the respondent-accused from the charges framed against him under section 420 & 467 of I.P.C. and we are in entire agreement with those reasonings.

11. This is an acquittal appeal in which court should be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. vs. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka vs. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles are ordered to be disposed of in terms of the directions given by the learned Judicial Magistrate, First Class, Lathi in his judgment.
